

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
)	WT Docket No. 08-165
Petition for Declaratory Ruling to Clarify)	
Provisions of Section 332(c)(7)(B) to Ensure)	
Timely Siting Review and to Preempt under)	
Section 253 State and Local Ordinances that)	
Classify All Wireless Siting Proposals as)	
Requiring a Variance)	

**REPLY COMMENTS OF FAIRFAX COUNTY, VIRGINIA, IN SUPPORT
OF PETITION FOR RECONSIDERATION**

Fairfax County, Virginia ("Fairfax County"), submits these comments in support of the Petition for Reconsideration or Clarification filed by the National Association of Telecommunications Officers and Advisors ("NATOA"), the United States Conference of Mayors, the National League of Cities, the National Association of Counties, and the American Planning Association.¹

I. BACKGROUND

The Petition for Reconsideration asserts that the Federal Communications Commission ("Commission") should reconsider, or at a minimum clarify, the initial 30-day deadline imposed on local authorities to review an application for completeness or waive their ability to "toll" the 90-day or 150-day deadlines established by the Order to

¹ In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Reconsideration or Clarification*, WT Docket No. 08-165, filed Dec. 17, 2009 ("Petition for Reconsideration").

take final action on wireless facility siting applications.² The Petition for Reconsideration cites both legal and practical problems that require reconsideration of the 30-day deadline.

Fairfax County supports the Petition for Reconsideration. The County submits that the Commission exceeded even its own interpretation of its authority under Section 332(c)(7) of the Telecommunications Act. Indeed, this internal 30-day deadline is a new limitation placed on local zoning authorities by the Commission and is not simply an interpretation of Section 332(c)(7). Further, such relief was not even requested by CTIA. Moreover, the imposition of a 30-day initial clock blatantly favors telecommunications facilities over all other uses in contravention of the Telecommunications Act. (*See* Comments of Fairfax County, Virginia, in Opposition to Petition for Declaratory Ruling filed by CTIA, 9/29/08, at 6). Rather than reiterating such legal arguments in detail, the County submits these comments separately to provide the Commission with additional examples of how the 30-day deadline will impact local governments, such as Fairfax County, in practice.

II. PRACTICAL PROBLEMS WITH THE 30-DAY INCOMPLETENESS DEADLINE

The 30-day requirement in the Order assumes that all telecommunications facility siting applications presented by wireless carriers are well conceived and nearly ready to proceed to a hearing before the legislative body, with the exception of a few minor pieces of information that might be required from an applicant. In reality, however,

² In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Declaratory Ruling*, WT Docket No. 08-165, FCC 09-99 (Nov. 18, 2009) (“Order”).

telecommunications facility siting applications that are filed with the County may consist of only partially formulated or purely conceptual plans. Understandably, such applications materially change as an applicant refines its plans and/or coordinates the application with staff or the community, which can easily trigger the need for additional information after the initial 30-day period has expired. On other occasions, after filing an application, the applicant may simply wish to make modifications to the size and location of antennas or equipment or it may propose to allow additional carriers on the same structure. Again, these changes often result in the need to re-route the application to others for comments, which in turn can result in the need for additional information after an initial 30-day window, through no delay or fault on the part of County staff.

Moreover, zoning applications are routinely reviewed by multiple disciplines in the County before they proceed to statutorily mandated public hearings. Such applications are typically reviewed by staff from the Fairfax County Department of Planning and Zoning, which includes environmental, historic preservation, land use, and zoning reviews. Such applications are also routinely evaluated by the Fairfax County Department of Public Works and Environmental Services, including Stormwater and Wastewater Management, Urban Forestry, and Environmental and Site Review, as well as the Fairfax County Department of Transportation. Other public agencies in Fairfax County, such as the Park Authority, School Board, Water Authority, and public safety agencies (police and fire and rescue), also regularly review special exception and other zoning applications. Plainly, it is extremely difficult for all of these agencies to know precisely what information will be needed within a 30-day period after filing.

Further, public land holders that are not part of the County government, such as the National Park Service, the Northern Virginia Regional Park Authority, and the Virginia Department of Transportation, are often contacted for comments regarding telecommunications siting proposals. Such organizations may not have even been made aware of the application at issue prior to its filing with the County for review. It is thus not uncommon for such organizations to have serious concerns about the proposal and to require additional information in order to provide comment. Such requests may fall outside the initial 30-day window, notwithstanding the fact that County staff has expeditiously processed the application at issue. An inflexible initial 30-day clock is simply not well suited to the practical realities of processing such applications.

III. CONCLUSION

Fairfax County, Virginia, urges the Commission to reconsider or clarify the Order as requested in the Petition for Reconsideration.

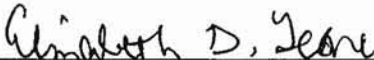
Respectfully submitted,

FAIRFAX COUNTY, VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the foregoing to be sent by facsimile on February 8, 2010, and by first class mail, postage prepaid, on the following day to: Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA-The Wireless Association, 1400 16th Street, NW, Suite 600, Washington, D.C. 20036, facsimile no. (202) 785-0721; and Michael Fitch, Esq., President and CEO, PCIA-The Wireless Infrastructure Association, the DAS Forum, 901 N. Washington Street, Suite 600, Alexandria, VA, 22314. Additionally, a copy was sent on February 8, 2010, to Best Copy and Printing, Inc., via e-mail sent to FCC@BCPIWEB.com.


Counsel